

AFFIRMATIVE ACTION PROGRAM REQUIREMENT

OF

THE HOUSING AUTHORITY OF THE
CITY OF NEWARK IN THE COUNTY OF ESSEX

PART B: Contractor and Subcontractor
Responsibilities -- Labor

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I. GENERAL STATEMENT

All Contractors working on any part of a project under contract(s) or subcontract(s), which involves actual employment of construction trades specified under Section V, and exceeding \$10,000 shall be required to meet the conditions and provisions included herein, which are incorporated into and made part of each contract(s) and subcontract(s).

The Newark Housing Authority hereinafter referred to as "Authority" will review contract bids from all contractors, to determine whether the bidder has met the requirements of the Affirmative Action Program. Compliance will be administered through the Authority's Equal Employment Opportunity Officer hereinafter referred to as "Review Officer".

II. PREAMBLE

The failure, historically, to employ, and the exclusion of, minorities on construction projects has resulted in the necessity for the development of an Affirmative Action Program aimed at insuring that equal employment opportunities are afforded to all, regardless of sex, race, color, religion or national origin. Contractors, therefore, are required to exert a positive "good faith effort" in order to satisfy the requirements of this contract to insure such equal employment opportunity.

III. FINDINGS

The Office of Federal Contract Compliance (OFCC), of the U.S. Department of Labor, held hearings in March 1970 on the racial composition of the skilled trades in the Greater Newark Area. While some progress has been made as a result of vigorous enforcement of Affirmative Action plans, the findings of facts made by the OFCC are essentially true at this time and the Authority adopts them as their own.

Under Executive Order 11246 as amended by Executive Order 11375, contractors and subcontractors must hire a new employee complement for each construction job, and out of the necessity or convenience, they rely on the construction craft unions as their prime or sole source for their labor. Collective bargaining agreements and/or established custom, between construction contractors and subcontractors and unions, frequently provide for, or result in, exclusive hiring halls; even where the collective bargaining agreement contains no such hiring hall provisions or the custom is not rigid, as a practical matter, most people working in the construction industry are referred to contractors by the unions. Because

III. FINDINGS (Cont'd)

of these hiring arrangements, referral by a union is a virtual necessity for obtaining employment in union construction projects, which constitute the bulk of commercial construction. Because of the exclusionary practices of some labor organizations in the Newark, New Jersey area, there traditionally has been only a small number of minorities employed in the construction trades. These exclusionary practices include:

- (1) Failure to admit minorities into membership.
- (2) Failure of the unions to refer minorities for employment, which has resulted in large measure from granting of priority in referral to union members and to persons who have had work experience under union contracts.
- (3) Failure to admit minority group members in apprenticeship programs.

IV. DEFINITIONS

For the purpose of the contract, unless the context indicates a different meaning:

- (1) MINORITY means Black, Puerto Rican, Spanish surnamed Americans, American Orientals, or females.
- (2) REVIEW COUNCIL is a body to be composed of no less than nine members who are to be approved by the Newark Housing Authority, two representatives of the unions and so designated by them, two representatives of the contractors and so designated by them, two representing the interests of the community and so designated by them, two representatives of the Authority and designated by it, and one representative of the Mayor of the City of Newark and designated by said Mayor.
- (3) The SUB-COMMITTEE of the Review Council is a body composed of four members as follows: one member representing contractors, one member representing the unions, one member representing the Authority, and one member representing the community; and shall be a subgroup of the larger Review Council.

The Sub-Committee of the Review Council shall review contract bids received by the Authority from all contractors to determine whether the bidder has met the requirements of the Affirmative Action Program to insure compliance.

The Review Officer, representing the Authority, will receive all documents submitted by bidders before the award of any contract for construction and assess these documents with the other three members of the Sub-Committee to determine whether the bidder has met the requirements of Equal Opportunity and Affirmative Action.

IV. DEFINITIONS (Cont'd.)

The Review Council will receive referrals of journeymen from the Minority Group Journeymen Referral Service, and minority apprentices from the Recruitment Training Program whenever unions are unable to supply. Trainees are to be requested from the Newark Construction Trades Training Corporation (defined infra), the Review Council shall determine the qualifications and classify persons as journeymen, advanced trainees, and basic trainees for the purpose of applying the provisions herein. Individuals shall be determined qualified for employment as journeymen, advanced trainees, and basic trainees solely upon the basis of experience, on-the-job evaluation and, where necessary, oral or written or performance examinations approved by the Review Council. No arbitrary method of evaluation measuring qualifications other than a person's ability to perform work shall be valid.

(4) The Newark Construction Trades Training Corporation (N.C.T.T.C.) at 370 Orange Street, Newark, New Jersey is a non-profit corporation, funded by the State of New Jersey for the purpose of supplying off-site training to minority individuals who are receiving on-site training pursuant to the various Affirmative Action Programs in the Greater Newark Area.

(5) ADVANCED TRAINEE is a worker who has experience and skills used in construction work but lacks the skills to be a qualified journeyman and is classified by the Review Council, or a subcommittee thereof, as an advanced trainee.

(6) BASIC TRAINEE is an applicant for employment who does not possess the qualifications for entrance into an apprenticeship program but demonstrates an interest in pursuing a craft in the construction industry and is classified by the Review Council, or a subcommittee thereof, as a basic trainee.

V. CONTRACTOR'S OBLIGATIONS

By submitting a bid, the contractor certifies that he will comply with the requirements of this plan, and shall make this Affirmative Action Program a part of his project specifications. In addition, to be responsive to his bid, the contractor must submit a statement by each union with which he has a collective bargaining agreement covering workers to be employed on said project. In either case, if no such statement has been obtained, the contractor will submit documentation of his efforts to obtain such statement.

At minimum the contractor (and/or relevant subcontractors) shall submit with his bid the following documentation explicated in detail below upon bidding for any particular job:

- Union statement of compliance
- Affirmative action intended goals
- Manning table (for subcontractors whose contracts exceed \$10,000)
- All collective bargaining agreements
- Designation of the contractor's affirmative action officer
- Certificate of compliance (narrative)

1. The contractor, in hiring for this job, shall make every effort to employ persons residing within the geographical jurisdiction of the appropriate union in order to insure that persons employed on the project will be brought into the permanent construction industry labor force in the area.

2. The contractor shall not discriminate against employees and applicants for employment on the grounds of union membership, or on the grounds of race, color, religion, sex, or national origin.

V. CONTRACTOR'S OBLIGATIONS (Cont'd)

3. Based on the findings made herein, the contractor will make every good faith effort to meet the following goals of minority journeymen utilization in the performance of his contract, whether or not the work is subcontracted.

4. The goals of this Affirmative Action Program in the selected trades shall be within the following ranges, all of whom shall be residents of Newark, and, preferably, residents of Authority housing developments.

<u>Trade Description</u>	<u>Goals of Minority Journeymen Utilization Within These Ranges</u>
Bricklayers	30-35 percent
Carpenters	30-35 percent
Cement Finishers	30-35 percent
Electricians	34-37 percent
Elevator Constructors	30-35 percent
Glaziers	29-32 percent
Insulators	30-35 percent
Ironworkers	31-34 percent
Lathers	30-35 percent
Operating Engineers	30-35 percent
Painters	30-35 percent
Plasterers	30-35 percent
Plumbers/Pipefitters	
Steamfitters	31-34 percent
Roofers	33-36 percent
Sheetmetal Workers	30-33 percent
Sprinkler Fitters	30-35 percent

On the attached form the contractor will submit with his bid his goals of minority journeymen utilization in the trades, specified above, in the performance of the contract. These goals shall be applicable whether or not the work is subcontracted.

5. The contractor will make every good faith effort to reach a goal of 50 percent minority group apprentices on the job in each trade listed in subparagraph 4 in which apprentices are employed, and shall hold each of his subcontractors to this requirement.

6. The contractor will cooperate with the Review Council in providing on-site training for persons employed on the construction site and will provide on-site opportunities to basic and advanced trainees referred to him by the Review Council. Each trainee will be excused from work for one day each week in order to receive off-site training at NCTTC. The Review Council shall retain the Newark Construction Trades Training Corporation for the purpose of recruiting and supplying off-site training to minority trainees referred to in paragraph IV (3) and (4).

7. The contractor shall not be required to employ more trainees than the

number permissible under the apprentices to journeymen employment ratio specified in the applicable collective bargaining agreement. Provided: No ratio requiring the employment of more than five journeymen for each trainee shall be applicable where the employment of minority group trainees is necessary in order to permit the contractor to meet obligations under these Supplemental Conditions.

8. Criteria for Measuring Good Faith

(a) The contractor shall hire for employment as journeymen, basic trainees and advanced trainees, persons referred to him by the Minority Group Journeymen Referral Service, the Joint Apprenticeship Program, and the Newark Construction Trades Training Corporation, who have been classified by the Review Council. If the contractor does not employ any person so referred, he shall submit a written explanation by close of day to the Review Council.

(b) The collective bargaining agreements between the various contractors and subcontractors and their various unions shall remain in force and effect except to the extent that they are inconsistent with the terms of the Affirmative Action Plan. Where required by custom or agreement, the contractor shall send referrals from the Review Council to the registrar for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. The unions will however have no right of rejection of Review Council referrals.

(c) The contractor will notify the Authority's Review Officer whenever he has reason to believe that a union with which he has a hiring hall or referral agreement or an apprenticeship program engages in such referral, membership, admission, or other practices as will substantially impede the contractor in his efforts to meet his Affirmative Action obligations under these Supplemental Conditions.

(d) A contractor shall not be deemed to have exercised good faith under this agreement solely because of union opposition, even if the union threatens a work stoppage because of the implementation of this plan. It shall be incumbent upon the contractor as employer to see to it that referrals under this plan are treated fairly by the unions and their members.

9. The contractors (and each subcontractor whose contract(s) exceeds \$10,000), shall develop and submit a Manning Table. This document shall identify his estimate manpower requirements for the duration of the job broken down by trade and month. The manning of the job shall be related to this document which shall be brought up to date as required but not less than once monthly. These documents shall be sent to the Review Council. A sample Manning Table is attached as Appendix D to this document.

V. CONTRACTOR'S OBLIGATIONS (Cont'd.)

10. The contractor shall submit copies of his collective bargaining agreements covering workers to be employed on the project, and copies of such bargaining agreements of each subcontractor.

11. The contractor shall designate a principal officer of his firm to be the Affirmative Action Officer who shall be responsible for administering the Affirmative Action Program detailed herein. This officer shall meet regularly or as may be required with all contractors, the Review Council, and the Authority to insure attainment of the goals set forth herein and the implementation of the training program.

12. The Review Officer will be responsible to maintain a Check List indicating whether contractors, or subcontractors, as applicable, have complied with the Affirmative Action requirements detailed in this document. This Check List is attached as Appendix C.

13. The contractor (or relevant subcontractors) must also submit a signed narrative "Statement of Compliance" with the Affirmative Action requirements pursuant to this document as well as all Federal, State, Municipal and Executive Order mandates.

VI. UNION STATEMENT

When the Contractor has a referral agreement or arrangements with a union covering workers to be employed on this project, he shall submit with his bid a statement similar to Appendix A, signed by an authorized union official, in which the union agrees as follows:

1. The union will take such action as may be necessary with respect to the referral and the employment of minority group persons in order to enable the contractor to meet his obligations under these Supplemental Conditions.
2. The union will cooperate with the Officer in providing on-site training on the construction site.
3. Minority group journeymen employed by the contractor shall be admitted to union membership within the time limits contained in the applicable collective bargaining agreements, union constitutions, and by-laws.

The contractor will promptly notify the Review Officer of any failure of the union to comply with its statement. If a union has refused to sign the statement described above, the contractor will document his efforts to obtain such statement, including a description with the reason given by the union for not signing such statement, and submit such documentation together with his bid. A bid shall be unresponsive if unaccompanied either by an acceptable union statement or by documentation as to why such statement could not be obtained.

VI. UNION STATEMENT (Cont'd)

In addition, the award of a subcontract will not be approved if such contractor has not submitted an acceptable union statement or an explanation of the failure to obtain such a statement.

The failure of the union to sign the statement described above does not excuse the contractor from his obligations to comply with the conditions and provisions of the Affirmative Action Program set forth herein.

VII. SUBCONTRACTORS

Each prime contractor is responsible for the performance of his subcontractors for the implementation of the Affirmative Action Program during the performance of the contract. Whenever the contractor subcontracts a portion of the work on this project, the subcontract shall bind the subcontractor to the obligations contained herein to the full extent as if he were the contractor.

VIII. COMPLIANCE

In the event of failure by a contractor to meet his minority manpower commitments specified herein, he shall be given an opportunity to demonstrate that he has made every good faith effort to meet his commitments. In any proceeding that such good faith is in issue, all of the actions of the contractor in seeking to comply with these requirements shall be reviewed and evaluated and monitored by the Review Officer.

1. The Review Officer will issue a written ALERT NOTICE to a contractor whenever, in his opinion, a breach of these conditions appear to be developing.

2. If the ALERT NOTICE is not removed by a correction of the deficiencies within three (3) days, the Review Officer shall follow up the ALERT NOTICE by issuing a written VIOLATION NOTICE. Upon issuance of such notice, the contractor will have seven (7) working days to remove the violation.

3. Either or both notices may be removed if the contractor meets his obligations under these conditions specified herein, or if he presents a satisfactory explanation in writing as to why such compliance is impractical, or impossible.

4. Failure to satisfactorily remove a violation notice shall be heard by the Review Council and a determination by them that the contractor is not in compliance with this plan shall result in a recommendation of sanctions by the Review Council to the Authority. Such recommendation shall be accepted by the Authority unless it is deemed unreasonable. Such sanctions may include any or all of the following:

- (1) The withholding of contract payments.
- (2) The termination or suspension of the contract.

- (3) Damages caused by non-compliance: Actual or liquidated. Liquidated damages shall be assessed by the Authority on behalf of the minority individual injured by the non-compliance of the contractor or subcontractor. It shall be assessed at the rate of \$500.00 per individual plus the full amount of back pay due to the individual from date of referral. This shall not be deemed to exclude any other damages which the individual can demonstrate as a result of the non-compliance.
- (4) Requiring the contractor to enforce his obligation under his contract with subcontractors, either by suit at law or in equity or arbitration, whichever is appropriate.
- (5) Commencement of an action by law or in equity or proceeding in arbitration as third-party beneficiary. Further, the non-compliance contractor shall indemnify the Authority for any damages that it may be found liable for vis a vis any of the other contractors or subcontractors on the job or any other third party because of the imposition of the above sanctions.

APPENDIX A

SAMPLE UNION STATEMENT

The _____ Union
being a party to a collective bargaining agreement covering
workers to be employed on the project, in order to assure
equal employment opportunity on such project, agrees as follows:

1. It will cooperate with the contractors with whom
it maintains a collective bargaining agreement
and the AUTHORITY with regard to the full imple-
mentation of the terms of the Supplemental
General Conditions Relating to Affirmative Action
for Equal Employment Opportunity at the project
(hereinafter referred to as Supplemental Conditions).
2. It will refrain from any practice or policy which
has as its purpose or effect impeding the contractor
or subcontractor in meeting his Affirmative Action
obligations.
3. It will take such action as may be necessary with
respect to the referral and employment of minority
group persons in order to enable the contractor,
and subcontractor to meet their obligations under
these Supplemental Conditions.
4. It will cooperate with the contractor in providing
on-site training.
5. It will admit to membership all minority group
journeymen employed by the contractor within the
time limits prescribed in the applicable collective
bargaining agreement, union constitutions and by-laws.

(Signed) _____

Title

Subscribed and sworn to before
me this _____ day of _____ 197 ____.

Title

My Commission expires _____

APPENDIX B

CONTRACTOR'S GOALS

SUBCONTRACTOR'S GOALS

<u>Trade</u>	<u>Goal (in percent)</u>
Bricklayers	
Carpenters	
Cement Finishers	
Electricians	
Elevator Constructors	
Glaziers	
Insulators	
Ironworkers	
Lathers	
Operating Engineers	
Painters	
Plasterers	
Plumbers; Pipefitters; Steamfitters	
Roofers	
Sheetmetal Workers	
Sprinkler Fitters	

(Signed) _____

Title

Subscribed and sworn to before me
this _____ day of _____ 197__.

Title

My Commission expires _____

LEGEND
- TRAINEE
T - JOURNEYMAN TRAINEE
- JOURNEYMAN
- APPRENTICE
- WHITE
W - NON-WHITE

Sample Sheet

[illegible]

AND MAINTAIN A PROJECTED MANNING REQUIREMENT. A COMPLETE PROJECTION WILL BE SUBMITTED